UPREME COURT, U. S.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1969.

No. 476

SEARS, ROEBUCK AND CO.,
Petitioner,

vs.

CARPET, LINOLEUM, SOFT TILE AND RESILIENT FLOOR COVERING LAYERS, LOCAL UNION NO. 419, AFL-CIO,
Respondent,

AND

CLYDE F. WAERS, REGIONAL DIRECTOR OF THE TWENTY-SEVENTH REGION OF THE NATIONAL LABOR RELATIONS BOARD, FOR AND ON BEHALF OF THE NATIONAL LABOR RELATIONS BOARD,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT.

REPLY TO MEMORANDUM IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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The memorandum submitted by Respondent Regional Director in opposition to the petition for a writ of certiorari filed herein by Sears, Roebuck and Co. is comprised of two elements. The first consists of the Regional Director's announced faith in the correctness of the decision of the Tenth Circuit which denied Sears the right to appeal an erroneous District Court denial of injunctive relief to which Sears was entitled under Section 10(l) of the National Labor Relations Act. The second alleges that the Decision and Order of the National Labor Relations Board on the merits of the underlying dispute renders Sears' appeal moot.

This Reply is devoted principally to the issue of mootness.

I. THE REGIONAL DIRECTOR'S BASES FOR ASSERTING THAT THE INSTANT APPEAL IS MOOT ARE WITHOUT FACTUAL OR LEGAL FOUNDATION.

A. The Relevant Facts: Sears' Need for Injunctive Relief.

So far as they relate to the question of mootness, there are few and uncontroverted facts:

1. Respondent Union's unlawful secondary picketing of Sears precipitated the filing of charges by Sears with the Board on August 9, 1968, and caused the Board, after appropriate investigation of the charges, to seek injunctive relief under Section 10(l) of the National Labor Relations Act on August 29, 1968.

2. The District Court refused to grant such injunctive relief in a decision rendered on October 4, 1968.

3. The Board refused to appeal this decision for reasons which it has never disclosed; instead the Board contented itself with prosecuting the Union's unlawful conduct in prolonged and time-consuming administrative proceedings.

4. Sears then sought to appeal the District Court's adverse ruling, an effort which failed when, on May 15, 1968, the Tenth Circuit dismissed the appeal solely on the ground that Sears lacked standing to lodge it.

5. On June 20, 1969, the Board issued its Decision and Order finding the Union guilty of the unfair labor practices charged.

6. The Union engaged in its unlawful picketing continuously and without cease from approximately August 7, 1968 until approximately June 26, 1969.

7. Accordingly, from June 20 until at least June 26, the Union picketed Sears in outright violation of the Board's Order.

8. By letter dated June 26, 1969, the Union, through its

counsel, notified the Board's Regional Director that it was undecided as to whether it would comply with the Board's Order; that it would cease its picketing of Sears only "in the meantime"; and that should the Union elect to resume picketing Sears, it would notify the Board ten days in advance of such resumption.[1]

9. On July 3, 1969, the Union filed a petition to review and set aside the Board's Decision and Order in a case now pending in the District of Columbia Circuit.[2]

10. This very Union has revealed a ready disposition to engage in those practices which the Board found to be unlawful in its Decision of June 20, 1969, and whose resumption was threatened by the Union in its letter of June 26, 1969. Thus, in three recent instances, two of which occurred subsequent to the Board's Decision in this case, the Board has been forced to seek injunctive relief against this same local Union, in the same city, for the same kind of picketing, against the same class of employers, and pursuant to the same type of dispute, as are involved in the instant Sears case.[3]

In consequence of these enumerated facts, certain conclusions necessarily follow. Respondent Union is prepared

1. A copy of this letter appears as Appendix "A", page SA 1, in the Supplemental Appendix attached to this Response. For the sake of clarity and further to authenticate this letter, copies of all correspondence which resulted in making this letter available to Sears are also reproduced as Appendices "B" through "E", pp. SA 2-11.

2. The Union's brief in the Court of Appeals, filed on about September 22, 1969, betrays its state of mind on the question of its intention to picket Sears. At page 25 of that brief "Sears can obtain the immediate surcease of the picketing by the simple measure of giving to its installers the prevailing rates of pay. The Union would then have no cause or reason to continue the picketing and would terminate it forthwith."

3. Copies of the Board's petitions for injunctive relief under Section 10(l) of the Act in all three instances are attached as Appendices "F", "G", and "H", pp. SA 12-40.

to engage in unlawful secondary picketing in furtherance of its imagined interests despite its knowledge that the Board considers such conduct to be illegal. It is prepared to do so, and has done so, in violation of an outstanding and unequivocal cease-and-desist Order of the Board. Since the Board's Order is not self-enforcing, it offers little deterrence to a Union predisposed to such conduct. Finally, the Union's expressed contemplation of a resumption of picketing emphasizes the jeopardy in which Sears now finds itself as a consequence of the absence of that injunctive relief to which it has always been entitled but has been unable to secure.

The Board's contention that the current appeal is moot is predicated upon the dual assumptions that (i) such injunctive relief is not needed, and (ii) even if it had been granted when sought, it would by now *necessarily* have expired. The fallacy of the first assumption is clear from the foregoing recital of the facts and their implications. The fallacy of the second assumption will be demonstrated below.

B. Had Injunctive Relief Been Granted Pursuant to Section 10(l) of the Act, Sears Could Presently Enjoy the Protection of Its Provisions.

Respondent Regional Director contends that injunctive relief under Section 10(l) automatically terminates upon the issuance of the Board's decision on the merits. This view is predicated upon the Regional Director's interpretation of the language of Section 10(l), which provides that injunctive relief may be obtained "pending the final adjudication of the Board". According to his interpretation, the Board's initial Decision and Order is synonymous with "final adjudication" within the meaning of the statute.

That result is required neither by logic, by equity, nor by

settled judicial opinion. On the contrary, Sears contends that a "final adjudication of the Board" should represent only that decision which ultimately and absolutely disposes of the disputed rights and duties of the parties. Accordingly, when the parties effect an amicable settlement of their dispute, which settlement is approved by the Board, that approval constitutes a "final adjudication" as nothing further remains to be resolved. Similarly, when neither party contests the terms of a decision of the Board, that, too, becomes a "final adjudication".

However, when an aggrieved party to a Board decision seeks review in the Court of Appeals, that decision loses its "finality". The court may enforce the Board's Order in whole, in part, or not at all; to the extent it refuses enforcement, the court may remand the case to the Board for a reconsideration of a legal judgment, for the taking of additional testimony, or for both. In circumstances where such appellate review is sought, to label the decision being reviewed a "final adjudication" constitutes an abuse of logic and language. In the instant case, Respondent Union's election to file the currently pending suit in the District of Columbia Circuit to review and set aside the decision of the Board which found the Union in violation of law, removed the "finality" from the Board's adjudication.

Support for Sears' position is found in *Houston Insulation Contractors Association* v. *N. L. R. B.*, 339 F. 2d 868 (CA 5, 1964). One of the issues in that case concerned the effect of a district court's action in granting injunctive relief under Section 10(l) "pending the final disposition of the matters involved". The court considered whether this grant of relief was impermissibly broad since it would extend beyond the mere issuance of the Board's decision and until the Court of Appeals rendered its own opinion on the merits of the Board's adjudication. The Fifth Circuit agreed that while the district court's action had precisely

the effect of prolonging the protection afforded by injunctive relief beyond the mere issuance of the Board's decision, such a result was consistent with the purpose and provisions of the statute:

> "We do not read [the district court's] language as going beyond the permissible scope of an injunction under § 10(l)—'appropriate injunctive relief pending the final adjudication of the Board'."

The Court's conclusion that an adjudication is not "final" when it is subject to reversal, amendment or remand, and when it does not, therefore, constitute "final disposition of the matters involved", is also supported by equitable considerations. Suppose a union were enjoined from engaging in unlawful secondary picketing pursuant to a proceeding under Section 10(l) of the Act. According to the Regional Director's contentions herein, upon the rendering of the Board's non-self-enforcing decision on the merits, the offending union becomes free of the terms of the injunction and free to resume its unlawful picketing.[4] Such a result, held the Fifth Circuit in the *Houston* case, serves, where appellate review is sought:

> ". . . to justify preserving the status quo until the case is finally disposed of in this [appellate] Court. Were petitioner to ultimately prevail, the beneficial effect of our decision would largely be vitiated, if while awaiting hearing and disposition, the Union were permitted to resume its activities."

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4. Under this view a resumption of the unlawful conduct could only be remedied by the Board's institution of a new suit for injunctive relief under Section 10(e) of the Act. But the Board is not required and cannot be compelled to do so. Moreover, Sears' experience in the instant case,—where the Board declined to appeal a district court's refusal to grant injunctive relief which the Board believed should have been granted—does not encourage reliance on the Board. In any event, the theoretical availability of such a tenuous concurrent remedy is no substitute for the quicker and more dependable relief afforded by the continuing protection of Section 10(l).

An additional and independent basis for rejecting the Regional Director's claim of mootness consists of the fact that the Board's decision, whether or not it is "final", did not adjudicate the question presented to this Court for review. The Board's opinion decided that the Respondent Union violated the labor laws and, by necessary implication, that the district court's refusal to grant injunctive relief was incorrect. But the question presented here for review relates to whether charging parties before the Board have standing to appeal the denial of injunctive relief,—not whether the denial itself was correct. Thus the question before this Court neither was, nor could have been, decided by the Board and, moreover, is totally unaffected by the merits of the Board's decision.

Nor do the authorities cited by the Regional Director require the dismissal of this appeal. *Carpenters' District Council* v. *Boire*, 228 F. 2d 454 (CA 5, 1961), involved a situation where the parties executed a formal voluntary bilateral settlement stipulation *following* the union's appeal of the granting of an injunction under Section 10(l). Since the stipulation resolved all matters involved in the injunction proceeding, the Board's approval of it constituted a "final adjudication" which did render further litigation concerning the injunction moot.

This is entirely consistent with Sears' prevoiusly expressed understanding of the meaning of "final adjudication" in Section 10(l). And in both *Monique, Inc.* v. *Boire*, 344 F. 2d 1017 (CA 5, 1965) and *Reynolds* v. *Nashville Bldg. Trades Council*, 383 F. 2d 562 (CA 6, 1967), the Board rendered a decision on the merits, while appeals were pending from adverse rulings in cases under Section 10(l), which also resolved the questions presented in the suits under Section 10(l). Thus a decision by the Courts on the appeals stemming from the injunction proceedings involved nothing more than a review of the merits of the Board's decision.

In a sense, therefore, the two cases became merged, with "mootness" the consequence of the merger.

In the instant appeal no such merger has occurred since the issue of standing to seek appellate review, which Sears presented to the Tenth Circuit and seeks to present here, cannot be decided by the Board either directly or indirectly, but is only for the courts to adjudicate.

II. AFFIRMATIVE SUPPORT FOR THE PROPOSITION THAT THE INSTANT APPEAL IS NOT MOOT.

Wholly apart from the considerations raised in the foregoing discussion of the elements of the Regional Director's contentions, other factors basic to a just and efficient judicial system impel the conclusion that the instant appeal is not moot.

A. Mootness Cannot Be Asserted So as to Deny Judicial Review of Short-Term Orders Which Are Capable of Repetition and Which Constitute Precedent in Future Similar Instances.

If the Regional Director is correct in contending that injunctive relief under Section 10(l) necessarily terminates when the Board renders its decision on the merits of the case, then the period during which such relief can exist is quite short. In the instant case, approximately eight and one-half (8½) months elapsed between the district court's ruling on the petition for injunctive relief and the subsequent issuance of the Board's decision. There is no reason known to Sears for doubting that this constitutes a typical period.

Under such circumstances, it would be virtually impossible ever to bring to this Court a case involving charges of judicial malfunction concerning or arising out of the grant-

ing or denying of injunctive relief; all such cases would become "moot" as they travelled their way through all the time-consuming stages of the judicial process which arrives, after the issuance of the Board's decision, in this Court. Yet each error committed below becomes precedent to be used against the interests of litigants who will be similarly unable to obtain review of their own "mooted" appeals. If this Court is ever to decide whether charging parties before the Board have standing to appeal a district court's denial of injunctive relief under Section 10(l), then its vehicle must be such a case as Sears brings here.[5]

Under the circumstances described, this Court has declared its refusal to apply the doctrine of mootness. In *Southern Pacific Terminal Company* v. *Interstate Commerce Commission, et al.*, 219 U. S. 498, 515-6, the appellant sought to have declared illegal an order of limited duration of the I. C. C., which had expired by its own terms while pending appeal. The Commission defended on the ground that the case had become moot. This Court held that the doctrine of mootness does not aply to such situations, in which public rights and interests are involved and questions of law are presented, whose resolution "might serve to guide the municipal body when again called upon to act in the matter". This Court's extended rationale of its decision in *Southern Pacific* applies equally here:

"In the case at bar the order of the Commission may

5. A further difficulty in bringing such cases to this Court results from the fact that a majority of the charges filed with the Board involving violations of law which could result in injunctive relief under Section 10(l) are filed by small employers. During fiscal year 1968, over fifty per-cent (50%) of such charges were filed by employers having less than thirty (30) employees. It is unlikely that such employers would be able or willing to expend such sums as would be required to bring their cases here even if they had no reason to fear their being "mooted" out of Court. (Thirty-Third Annual Report of the N. L. R. B., Table 18, pp. 238-9).

to some extent (the exact extent it is unnecessary to define) be the basis of further proceedings. But there is a broader consideration. The questions involved in the orders of the Interstate Commerce Commission are usually continuing (as are manifestly those in the case at bar) and their consideration ought not to be, as they might be, defeated, by short-term orders, capable of repetition, yet evading review, and at one time the Government and at another time the carriers have their rights determined by the Commission without a chance of redress."

B. The Public Interest in the Clarification of Charging Parties' Appellate Rights Precludes a Finding That the Issue Is Moot.

Administrative agencies function essentially as trustees for the public under trusts created by Congress for the welfare and protection of the beneficiaries. The public has a substantial and legitimate interest in the development and clarification of rules and procedures adopted and employed on their behalf, including the creation of precedent which gives definiteness to the statutes which guide their conduct and describe or limit their rights. *United States v. Trans-Missouri Freight Association*, 166 U. S. 290. The importance of that interest should supersede technical questions concerning mootness where, as here, the presence of such an agency functioning as an active litigant assures that an adequate presentation of all issues will be made in the course of clarifying the statute's meaning.

"Not easy to weigh, [the public interest in an adjudication on the merits] has seemed to some courts so pressing . . . as to justify a decision on the merits despite the fact that the decision could have no substantial effect on the parties who originally raised the question and that its usefulness would, as a result be largely confined to the creation of precedent." (Citations ommitted.) (Note, "*Moot*" *Administrative Orders*, 53 HARV. L. REV. 628, 630 (1940).

Whenever an inquiry into the provisions of a statute raises a Constitutional issue, the public interest in its prompt resolution *a fortiori* requires a decision on the merits irrespective of the effect or non-effect of that decision on the litigants (5 AM. Jur. 2d, Appeal and Error, §§ 762-765). In the instant case Sears seeks this Court's agreement that the refusal of the Tenth Circuit to permit it to appeal an adverse district court decision when the Board refused to do so violated due process of law. Sears claims to have been deprived of what Mr. Justice Brandeis described as basic to due process:

> "The supremacy of law demands that there shall be opportunity to have some court decide whether an erroneous rule of law was applied; and whether the proceeding in which facts were adjudicated was conducted regularly." (*St. Joseph Stock Yards Co.* v. *United States*, 298 U. S. 38, 84 (concurring opinion)).

Accordingly, in the face of the existence of a Constitutional question together with the general, legitimate and paramount public interest in the clear and proper unfolding of the requirements of the statute, the Regional Director's contention that this appeal is moot is untenable.

C. The Limited Applicability of Mootness to Proceedings Under the National Labor Relations Act.

As the earlier summary of the relevant facts in this case revealed, Respondent Union ceased its unlawful picketing approximately one week following the issuance of the Board's Decision and Order; however, the Union has not stated its intention to comply with the terms of that Order and has indicated that it may resume its picketing at any time.

In order that no assumption be indulged that the Union's temoporary cessation of its unlawful conduct renders this

appeal moot, and in order further to demonstrate courts' reluctance to apply the doctrine of mootness to cases involving the interpretation or application of the National Labor Relations Act, Sears advances the following additional principles and authorities.

In general, the cessation of picketing or other unlawful conduct under pressure of legal proceedings or pursuant to the result of such proceedings does not render a case moot.

In *NLRB* v. *Mexia Textile Mills, Inc.*, 339 U. S. 563, this Court established the proposition that the cessation of unlawful conduct in compliance with an order of the Board does not render a case moot. Enforcement of that order was granted despite a prior settlement of the dispute.

This Court reaffirmed and extended that principle in *Local 1976, United Brotherhood of Carpenters and Joiners, et al.* v. *NLRB*, 357 U. S. 93, a case in which a union had engaged in an unlawful secondary boycott, had ceased such conduct subsequent to the filing of charges against them but prior to the issuance of a complaint by the Board's General Counsel, and had then settled the dispute by entering into a collective bargaining agreement containing an explicit pledge not to resume striking. This Court held that "the controversy was not rendered moot" under these facts; ". . . we cannot say that there was no danger of continued violation."

Courts of Appeals uniformly have followed these principles in a wide variety of factual contexts. In *NLRB* v. *United Hatters, et al.*, 286 F. 2d 950 (CA 4, 1961), involving, as here, an unlawful secondary boycott, the Fourth Circuit held that:

> "Nor can we adopt the suggested dismissal of the petition as now presenting only an academic question inasmuch as the pickets have long since been withdrawn."

NLRB v. *Local 182, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America*, 314 F. 2d 53 (CA 2, 1963), involved a situation where a Board's cease and desist order had expired prior to the Board's petition for enforcement. Nonetheless, the case was held not to be moot and the order was enforced since the Court's adjudicated concurrence with the Board's finding of a violation of law might be a relevant determination "with respect to subsequent picketing of the same general nature by the Union against the Company."[6]

Similarly in *NLRB* v. *Plumbers Union of Nassau County, Local 457, et al.*, 299 F. 2d 497 (CA 2, 1962), involving another secondary boycott, the Second Circuit held that:

> "Finally, termination of the picketing, the walkout and the particular job itself do not render the Board's order moot."

Decisions of the Sixth Circuit are to like effect, as in *NLRB* v. *Globe Wernicke Systems Company*, 336 F. 2d 589 (CA 6, 1964), in which the Court stated that:

> "Abandonment of an unfair labor practice does not cause the controversy to become moot."

In *NLRB* v. *Marsh Supermarkets, Inc.*, 327 F. 2d 109 (CA 7, 1963), the Seventh Circuit expressed its concern over the ever-present possibility of the resumption of discontinued unfair labor practices. In a case involving alleged unlawful conduct in connection with a first election after which a final and valid second election had been held, the Court stated:

> "Neither compliance with the Board's order, nor a subsequent certification of the union as bargaining representative renders the case moot . . . If the court

6. Respondent Union's threat to resume picketing, as expressed in its letter of June 26, 1969, as well as by implication of its general conduct in such cases, renders this rationale particularly apt in the instant case.

> makes no decision as to the Respondent's former conduct, it may then be repeated; hence a decision as to its legality will not be a futile exercise of jurisdiction."

These principles have found expression in decisions of the Third Circuit, as in *Leeds & Northrup* v. *NLRB*, 357 F. 2d 627 (CA 3, 1966), and *NLRB* v. *Local 65, United Brotherhood of Carpenters and Joiners of America, AFL-CIO*, 318 F. 2d 419 (CA 3, 1963): "Moreover, we do not regard the case as moot and the fact that there has been compliance with the Board's order does not militate against the injunction sought by it."

Thus the Supreme Court and Courts of Appeals throughout the Circuits have rejected the idea that Labor Act cases become moot when illegal acts are discontinued and disputes are settled after the judicial process has begun to function on those cases. This doctrine has applied to instances where the discontinuance occurs after the Board renders its decisions as well as before administrative complaint issues, it has applied to proceedings before the Board and proceedings before the courts of enforcement.

A very recent example of the approach taken by the Board in cases involving the issue of mootness where unfair labor practices have been discontinued and the underlying dispute has been settled in the course of litigation, appears in *Allied Industrial Workers of America*, 174 NLRB No. 61 (1969). In that case the Union discontinued its unlawful secondary picketing and executed a collective bargaining agreement with the employer subsequent to the Trial Examiner's finding that unfair labor practices had been committed. The Union and the employer jointly sought the withdrawal of proceedings prior to the Board's consideration of the Trial Examiner's decision on the ground that the matter had become settled and moot. In opposing such withdrawal, the Board's Gen-

eral Counsel argued that the violations which were committed were of a "serious and continuing nature," and that the execution of a labor agreement neither dissipated the effects of the unfair labor practice charges or obviated the need for a remedial order. The Board agreed with its General Counsel and denied the request to withdraw the charges. Surely, if the dispute in that case was not to be considered moot when even the aggrieved employer sought to terminate proceedings, then *a fortiori* it is not moot in the instant proceeding where Sears, fearing a possible resumption of unlawful picketing, continues to desire and to believe itself entitled to injunctive relief.

An appropriate conclusion to this section consists in a famous quotation from *NLRB* v. *General Motors Corp.*, 179 F. 2d 221 (CA 2, 1950), which summarizes the bases for rejecting the concept of mootness in the instant case as well as those which were discussed above:

> "The defendant in an action for an injunction never as a matter of right becomes entitled to a dismissal because after process served, he discontinues the conduct of which the plaintiff complains. It is for the court to say whether the plaintiff shall be compelled to accept his assurance that he will not resume what he should not have begun. After all, no more is involved than whether what the law already condemned, the court shall forbid; and the fact that its judgment adds to existing sanctions that of punishment for contempt, is not a circumstance to which a court will ordinarily lend a friendly ear. The defendant on his part can invoke no other interest except an escape from whatever stigma attaches against him, and to the court's refusal to accept his promise that he will not repeat the wrong. Ordinarily, that will not be a counterweight to the protection of which the plaintiff has shown he was once in need, and which he will need again should the defendant change his mind."

III. THE REGIONAL DIRECTOR'S RESPONSE TO THE MERITS OF SEARS' CONTENTIONS.

The Regional Director's Memorandum in opposition to Sears' Petition for a Writ of Certiorari herein fails to address itself to the merits of the arguments marshalled in support of the Petition both by Sears and by the *amici curiae*. Instead, the Regional Director adopts the reasoning and the result of the Tenth Circuit case which Sears seeks to review here. It is appropriate, therefore, to reply briefly to several of that court's contentions which the Regional Director supports and on which he relies, and to which Sears had not previously addressed itself:

1. In order to convey the impression that no inconsistency exists between the decision of the Tenth Circuit sought here to be reviewed and the decision of the Ninth Circuit in *Retail Clerks Union, Local 137, et al.* v. *Food Employers Council*, 351 F. 2d 525 (CA 9, 1965), the Tenth Circuit characterized the holding in *Retail Clerks* as being limited only to rights existing in injunction proceedings *in the district courts*. But this distinction is unsound since appellate review is an extension of the same cause litigated in the district court, rather than a new and separate action. *Marbury* v. *Madison*, 1 Cranch 137. Moreover, the Tenth Circuit's decision itself was predicated upon that court's view that Sears lacked standing to appeal because Section 10(l) did not accord charging parties the status of juridical parties *in the district court*.

2. The Tenth Circuit's view that Section 10(l) must be read "literally" would seem to require denying charging parties even the right to make oral argument or file briefs in proceedings under Section 10(l). Courts, including the Tenth Circuit, have not so construed the Act. However the courts have described the status of charging parties, it

seems clear that they have endeavored to accord them due process by permitting them an opportunity to be heard fully and effectively in proceedings involving their vital interests. Thus, the Ninth Circuit in *Retail Clerks* permitted the charging parties to make oral argument and file briefs in the appeal filed by the Board.[7] This assured them an adequate opportunity to protect and perfect their rights. How they were described is less important than the fact that their right to due process participation was recognized. In the Tenth Circuit's decision no such due process was accorded since, in the absence of an appeal by the Board and in view of the refusal to permit Sears to appeal, no forum was provided in which Sears could make argument, file briefs or otherwise be heard on the district court's erroneous failure to protect the rights conferred on Sears in Section 10(l).

3. The Tenth Circuit's reliance on the Norris-LaGuardia Act to justify denying Sears' standing to appeal the district court's failure to grant a *temporary* injunction fails to explain how aggrieved charging parties may obtain a *permanent* injunction under Section 10(f). If Norris-LaGuardia bars courts from granting injunctive relief—except on direct application *by the Board*—then it would seem that this bar would apply to all such relief, whether temporary or permanent. Yet Section 10(f) of the National Labor Relations Act clearly permits charging parties to obtain permanent injunctive relief. The Tenth Circuit's error consisted in its failure to give effect to Section 10(h) of the Act which removes the bar of Norris-LaGuardia in *all* proceedings under Section 10, including charging parties' appeal from both adverse final orders of the Board as well as adverse final orders of the district court.

7. Attached as Appendix "I", p. SA 41, is an official certification by the Clerk of the Ninth Circuit listing the parties who made argument and filed briefs in the *Retail Clerks* case.

4. Finally, the Tenth Circuit pronouncement that only those who were full juridical parties in the lower court may maintain an appeal is similarly incorrect. Without receding from our contention that charging parties do enjoy that status in the district court by virtue of Section 10(l), there exists clear and respected authority—made to and rejected by the Tenth Circuit—for the proposition that the nature of Sears' interests and involvement in the Section 10(l) proceedings permits an appeal irrespective of their label.

Pursuant to the second proviso of Section 10(l), the charging parties were entitled to and did receive notice of the filing of the petition for injunction in the district court, and they were entitled to and were accorded the right "to appear by counsel and present any relevant testimony".

Having taken advantage of these rights granted them by law, the charging parties are further entitled, as a matter of right, to seek review.

> "Where a statute gives an absolute right to be heard, which is tantamount to formal intervention, there is a concomitant right of appeal, except where the statute itself precludes an appeal." 4 Moore, Federal Practices 104 (2d ed. 1963).

Under analogous Acts of Congress such right of appeal is present. For example, under Section 206 of the Chandler Act, 11 U. S. C. § 606, relating to bankruptcy proceedings, the debtor, the indenture trustees, and any creditor or stockholder of the debtor is granted the right "to be heard on all matters arising in a proceeding under this chapter". Although the persons mentioned are not formal parties, the quoted language has been construed as making these persons quasi-intervenors and thus authorizing appeals by them. *In re Keystone Realty Holding Co.*, 117 F. 2d 1003,

1005 (CA 3, 1941); accord, *Gleeson* v. *Carr*, 219 F. 2d 64, 67 (CA 9, 1955), cert. den. 350 U. S. 827 (1955); *Rogers* v. *Consolidated Rock Prods. Co.*, 114 F. 2d 108, 110 (CA 9, 1940), aff'd on other grounds, 312 U. S. 512 (1940); see *Young* v. *Higbee Co.*, 324 U. S. 204, 210.[8]

Having been accorded by Section 10(l) of the Act a quasi-intervenor or statutory-intervenor status below, the charging parties are entitled as of right to appeal a decision of the district court adverse to their interests.

IV. THE BRIEFS AMICI CURIAE IN SUPPORT OF SEARS' PETITION.

In supporting the instant Petition for a Writ Of Certiorari, the *amici*, representing hundreds of employers throughout the country, evidence the substantial public interest in the question presented for review and the widespread desire for its resolution by this Court.

Sears adopts the arguments and conclusions of both *amici* to the extent they raise new matters or expand upon others not fully covered in Sears' Petition.

With specific reference to the request of Terminal Freight Handling Company and Terminal Freight Cooperative Association, should this Court grant Sears' Petition, to delay oral argument pending the Third Circuit's decision in *Samoff* v. *International Association of Machin-*

8. Additional support for the proposition that those who may not have been formal parties in a lower court may nonetheless move independently to protect such of their rights as were involved in the litigation there derives by analogy from Rule 71 of the Federal Rules of Civil Procedure:

> "When an order is made in favor of a person who is not a party to the action, he may enforce obedience to the order by the same process as if he were a party; and, when obedience to an order may be lawfully enforced against a person who is not a party, he is liable to the same process for enforcing obedience to the order as if he were a party."

ists, District Lodge No. 1, Sears wishes to join in this request. Oral argument in the *Samoff* case is scheduled for October 24, 1969, so that no substantial delay is likely to result should that request be granted.

Moreover, should this Court be unpersuaded of the wisdom and need to grant Sears' Petition on the basis of the current posture of the case, Sears further requests that this Court delay its final judgment until after the Third Circuit renders its decision on the identical and related questions involved in *Samoff.*

Respectfully submitted:

GERARD C. SMETANA,
Attorney for Petitioner.

Of Counsel:

ALAN RAYWID,
KALVIN M. GROVE,
DONALD L. GIACOMINI.

SUPPLEMENTAL APPENDIX

APPENDIX A

PHILIP HORNBEIN, JR.
Attorney at Law
2007 Security Life Building
Denver, Colorado 80202

June 26, 1969

Mr. Francis Sperandeo, Regional Director
National Labor Relations Board
260 New Custom House
Denver, Colorado 80202

Re: Sears, Roebuck and Co.
Case No. 27-CC-278

Dear Mr. Sperandeo:

This will confirm my telephone conversation with Mr. Bruce Gillis on this date. I informed him that the Union has not yet decided whether or not to voluntarily comply with the Board's order, but that in the meantime all picketing of Sears will be discontinued.

I further advised Mr. Gillis that we will not resume picketing of Sears without first giving your office at least ten days notice in advance thereof.

Very truly yours,

s PHILIP HORNBEIN, JR.
Philip Hornbein, Jr.

PHjr/w

cc: Carpet Layers Local Union No. 419

APPENDIX B.

NATIONAL LABOR RELATIONS BOARD
Office of the General Counsel
Washington, D. C. 20570

October 6, 1969

Mr. Gerard C. Smetana
Sears, Roebuck and Co.
Chicago, Illinois 60607

Re: Carpet, Linoleum, Soft Tile and Resilient Floor Covering Layers, Local Union No. 419, AFL-CIO.
Case No. 27-CC-278

Dear Mr. Smetana:

This replies to your letter of September 29, 1969, requesting that Regional Director Francis Sperandeo receive written permission to furnish you with a copy of a letter to him from Mr. Phillip Horbein, attorney for Respondent Union.

I have concluded that your request should be granted and have accordingly authorized Mr. Sperandeo to furnish you with a copy.

Your very truly,

s/ ARNOLD ORDMAN
Arnold Ordman
General Counsel

cc: Francis Sperandeo

APPENDIX C.

SEARS, ROEBUCK AND CO.
Chicago, Illinois 60607
Phone 265-2500

Law Department

September 29, 1969

Messrs. Frank W. McCulloch, Chairman
Ogden Field, Executive Secretary
Arnold Ordman, General Counsel

National Labor Relations Board
1717 Pennsylvania Avenue, N. W.
Washington, D. C. 20570

Re: Carpet, Linoleum, Soft Tile and Resilient Floor Covering Layers, Local Union No. 419, AFL-CIO

and

Sears, Roebuck and Co.
176 NLRB No. 120
(Civil No. C-1052)

Gentlemen:

This letter constitutes a formal request, for written consent of the Board or the Chairman of the Board, or the General Counsel, for the production of a certain document, or information pursuant to Rule 102.118, and also a formal demand under Section 102.117 for purposes of inspection and copying of a certain document.

The document we seek and the reasons therefor are set forth in my letter of September 18, 1969, (copy attached herewith) to Francis Sperandeo, Esq. Regional Director,

Twenty-Seventh Region. By letter of September 23, 1969, (copy of which is also attached) W. Bruce Gillis, Acting Regional Director, refused to produce the letter described in my letter of September 18 on the grounds that it falls outside of Section 102. 126 and 102. 128 of the Board's Rules and Regulations dealing with ex parte communications "without the written consent of the Board or the Chairman of the Board . . . or the General Counsel . . . ".

In addition to the authorities cited in our letter of September 18, we would respectfully call your attention to the decision of Judge Mansfield, *Government Employees Insurance Company* v. *McLeod*, 69 LRRM 2186, 2189, in which the Board was directed to produce a document that was an ingredient in the decision-making process, after proper demand had been made.

For all of the foregoing reasons and those contained in our letter of September 18, we respectfully request either written consent so that the Regional Director will produce a copy of the Union's letter or production of the letter for purposes of inspection and copying.

Sincerely,

s/ GERARD C. SMETANA
Gerard C. Smetana

GCS: re

att.

cc: Francis Sperandeo, Esq. (w/o att.)
Philip Hornbein, Esq. (w/9/23/69 att.)

APPENDIX D.

NATIONAL LABOR RELATIONS BOARD
Region 27
260 New Custom House, 721 Nineteenth Street
Denver, Colorado 80202
Telephone 297-3551

Examiners and Attorneys
Telephone 297-3555

September 23, 1969

Sears, Roebuck and Company

Attention Gerard C. Smetana, Labor Relations Counsel
Chicago, Illinois 60607

Re: Carpet, Linoleum, Soft Tile and Resilient
Floor Covering Layers
(Sears, Roebuck and Co.)
Civil No. C-1052

Dear Mr. Smetana:

Our office yesterday received your letter dated September 18, 1969, requesting a copy of a certain letter received by our office from the Respondent Union in the above-captioned matter. I do not believe that under the Board's existing Rules and Regulations, we can send you a copy.

At the outset, I seriously dispute your contention that this letter constitutes an unauthorized ex parte communication within the intendment of "Sub Part P—Ex parte Communi-

cations" of the Board's Rules and Regulations, Section 102.126 and following; more specifically Section 102.128 defining the certain types of "on the record proceedings" involved clearly does not cover this situation.

As your request is not covered by the above, it falls within the general prohibitions of Subpart K, Section 102.118 of the Rules and Regulations which prohibits the production of such information as you request ". . . without the written consent of the Board or the Chairman of the Board . . . or the General Counsel . . . " whose addresses are National Labor Relations Board, 1717 Pennsylvania Avenue, N. W., Washington, D. C., 20570. Accordingly, without such written consent, our office is unable to comply with your request.

Very truly yours,

s/ W. Bruce Gillis, Jr.
W. Bruce Gillis, Jr.
Acting Regional Director

APPENDIX E

Sears, Roebuck and Co.
Chicago, Illinois 60607
Phone 263-2300

Law Department

September 18, 1969

Francis Sperandeo, Esq.
Regional Director,
Twenty Seventh Region
National Labor Relations Board
Post New Custom House
Denver, Colorado

Re: Carpet, Linoleum, Soft Tile and
Resilient Floor Covering Layers
Local Union #419, AFL-CIO
and
Sears, Roebuck and Co.
126 NLRB No. 139 (Case No. 1-CA-)

Dear Mr. Sperandeo:

This letter constitutes a formal request by Sears, Roebuck and Co. for information from your files to which Sears believes it is entitled in connection with the captioned cases.

You will recall that in our recent conversation in your office on September 11, 1969 you confirmed my understanding that sometime subsequent to the issuance of the Board's Order in this case the Union, through its counsel, announced to you by letter its intention to resign for the

present its adjudicated unlawful picketing to give you ten (10) days notice should that picketing be resumed, and stated its indecision as to whether to appeal the Board's Order.

We hereby request a copy of the Union's letter.

In order to place the relevance of that letter in proper perspective, you will further recall the following background facts:

A. On August 29, 1968 pursuant to a charge filed by Sears protesting the Union's unlawful secondary picketing, your office petitioned the District Court for mandatory injunctive relief under Section 10(l) of the Act.

B. On October 4, 1968 the District Court refused to grant the requested injunctive relief. Sears then appealed this decision to the Tenth Circuit Court of Appeals.

C. On May 15, 1969 the Court of Appeals dismissed Sears' appeal on the ground that Sears lacked standing to prosecute it; the Court did not reach the merits of the dispute.

D. On June 20, 1969 the Board issued its decision finding that the Union had in fact engaged in the unlawful picketing as charged by Sears and as the Board's petition for injunctive relief had alleged.

E. The Union had continued its unlawful picketing throughout this entire period and even subsequent to the Board's Order.

F. On June 6, 1969 as a consequence of the Union's continuing picketing, Sears filed motions for a stay of mandate of the Tenth Circuit and for an injunction pending its appeal of the Tenth Circuit's decision.

G. At the time that Sears' afore-described motions were pending the Board conveyed both to counsel for

the Union and for Sears its intention to seek injunctive relief against the Union's violation of the Board's Order to cease the continuing unlawful picketing.

H: The Union's letter to which the instant request is addressed was received by you sometime between the date of the Board's Order, June 20, 1969 and the date of the Union's petition for review of that Order in the Court of Appeals for the District of Columbia Circuit on July 3, 1969. Further, this letter was written at a time when Sears' motion for interim injunctive relief was pending and when the Board was preparing independently to seek such relief under Section 10(e) of the Act.

Accordingly, the Union's letter had the effect of terminating or preventing the institution by the Board of projected proceedings in the District Court; it unilaterally affected the remedy to which Sears, as the aggrieved charging party, was entitled and would enjoy as a consequence of that suit; and it effectively undercut Sears' own pending motion for interim injunctive relief.

Under these circumstances, Sears believes that the Union's letter to which we refer constitutes an unauthorized ex parte communication within the meaning and spirit of the Public Information Act, 5 U. S. C. § 522 and Section 102.126 of the Board's Rules and Regulations. Although Section 102.128(e) of the Board's Rules appears to limit this doctrine to proceedings before Trial Examiners in cases pending before them, it is clear that the spirit and the very purpose of these Rules requires their extension to all stages of Board proceedings or of resulting court proceedings in which the communication in question has the effect, in the terms of Section 102.126, of "concerning the disposition on the merits of the substantive and procedural issues in the proceeding". Since, as we have noted,

the ex parte communication involved here had the effect of forestalling the institution of an action by the Board and also deprived Sears of a desired remedy available therein, the explicit condition for identifying "unauthorized" communications has been met. Sears therefore believes itself to be entitled to a copy of the Union's ex parte communication which achieved these objectives.

With respect to the question of extending the express language of the Board's rules in order to conform their purpose to the various situations in which they logically apply, we respectfully direct your attention to various Appellate Court decisions which have effected such extensions in keeping with the spirit of these Rules to enlarge the exchange of relevant information between interested parties. See, for example, *Harvey Aluminum* v. *NLRB*, 335 F. 2d 749 (CA 9, 1964); *NLRB* v. *Safeway Steel Scaffold Co.*, 383 F. 2d 749 (CA 9, 1964); *NLRB* v. *Safeway Steel Scaffold Co.*, 383 F. 2d 273 (CA 5, 1967), cert. den. 390 U. S. 955 (1968); *Palermo* v. *U. S.*, 360 U. S. 343 (1959), and *NLRB* v. *Borden Co.*, 392 F. 2d 412 (CA 5, 1968).

When Sears made an oral request to you on September 11, 1969, for a copy of the Union's letter, you indicated that you would not provide such a copy without the consent of the Union's counsel. That consent was not received. While you thus declined to furnish Sears with a copy of that letter, you did describe its contents, as has been detailed above. In a telephone conversation today, your office indicated a current intention to adhere to your prior decision. This formal request is written in the hope and expectation that upon further consideration, you will reverse that decision. However, if we do not receive a response from you by September 24, 1969, we shall assume that you continue to adhere to your prior refusals.

We should like to add that a copy of this letter is being forwarded to the Union, in accordance with the salutory principle that ex parte communications should be discouraged.

Your expeditious response to this formal request would be greatly appreciated.

Very truly yours,

/s/ Gerard C. Smetana,
Labor Relations Counsel,
Sears, Roebuck and Co.

GCS/sms

CC: Philip Hornbein, Esq.

APPENDIX F.

UNITED STATES DISTRICT COURT

For the District of Colorado.

FRANCIS SPERANDEO, Regional Director of the Twenty-Seventh Region, of the National Labor Relations Board, for and on behalf of the NATIONAL LABOR RELATIONS BOARD, *Petitioner,* vs. CARPET, LINOLEUM, SOFT TILE AND RESILIENT FLOOR COVERING LAYERS, LOCAL UNION NO. 419, AFL-CIO, *Respondent.*	Civil No. C-1679.

PETITION FOR INJUNCTION UNDER SECTION 10(l) OF THE NATIONAL LABOR RELATIONS ACT, AS AMENDED.

To the Honorable, the Judges of the United States District Court for the District of Colorado:

Comes Now Francis Sperandeo, Regional Director for the Twenty-Seventh Region of the National Labor Relations Board (herein called the Board), and petitions this Court for and on behalf of the Board, pursuant to Section 10(l) of the National Labor Relations Act, as amended, 61 Stat. 149; 73 Stat. 544; 29 U.S.C. Sec. 160(l) (herein called the Act), for appropriate injunctive relief pending the final disposition of the matters involved herein pend-

ing before the Board on charges alleging, *inter alia*, that Respondent has engaged in, and is engaging in, acts and conduct in violation of Section 8(b)(4)(i)(ii), subparagraph (B) of the Act. In support thereof, Petitioner, respectfully shows as follows:

1. Petitioner is Regional Director of the Twenty-Seventh Region of the Board, an agency of the United States, and files this petition for and on behalf of the Board.

2. Jurisdiction of the Court is invoked pursuant to Section 10(l) of the Act.

3. On or about July 24, 1969, B. H. Baker, Inc. (herein called Baker), pursuant to the provisions of the Act, filed a charge with the Board alleging, *inter alia*, that Carpet, Linoleum, Soft Tile and Resilient Floor Covering Layers, Local Union No. 419, AFL-CIO (herein called Respondent), a labor organization, has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(b)(4)(i)(ii), subparagraph (B) of the Act. A copy of said charge is attached hereto as Exhibit A and made a part hereof.

4. The aforesaid charge was referred to Petitioner as Regional Director of the Twenty-Seventh Region of the Board.

5. Upon the basis of the following, the Petitioner has reasonable cause to believe that the said charge is true insofar as it alleges that Respondent has violated Section 8(b) (4) (i) (ii), subparagraph (B) of the Act, and that a complaint of the Board, based on said charge should issue against Respondent pursuant to Section 10(b) of the Act. More particularly, Petitioner has reasonable cause to believe, and believes, that Respondent, Carpet, Linoleum, Soft Tile and Resilient Floor Covering Layers, Local Union No. 419, AFL-CIO, is a labor organization within the mean-

ing of Section 2(5), 8(b), 8(c), and 10(l) of the Act, and has engaged in, and is engaging in, acts and conduct in violation of Section 8(b) (4) (i) (ii), subparagraph (B) of the Act, affecting commerce within the meaning of Section 2(6) and (7) of the Act, as follows:

(a) Respondent, an unincorporated association, is an organization in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(b) Respondent maintains its principal office at 1129 16th Street, Denver, Colorado, and at all times material herein Respondent has been engaged within this judicial district in transacting business and in promoting and protecting the interests of the employee members of Respondent.

(c) At all times material herein George Cooney has been financial secretary and business manager of the Respondent, and Paul G. Wishard has been a field representative of Respondent.

(d) Baker, a Colorado corporation, is engaged at Colorado Springs, Colorado, as a contractor in the building and construction industry. In the course and conduct of its business, Baker annually receives goods and materials directly from outside the State of Colorado valued in excess of $50,000.

(e) At all times material herein, Baker has been engaged as a general contractor in the construction of a new addition to the USAF hospital, United States Air Force Academy, Colorado Springs, Colorado.

(f) In the construction of said hospital addition, Mascon, Inc. (herein called Mascon), has been engaged as a contractor to perform the masonry work; J. O. Veteto and Son, Inc. (herein called Veteto), has been engaged as a contractor

to perform lathing, plastering, and drywall work; and Whitney Electric Company (herein called Whitney) has been engaged as a contractor to perform the electrical work.

(g) Mo-Ham Carpet Cleaners, an individual proprietorship (herein called Mo-Ham), is engaged in Colorado, New Mexico, and Utah as a contractor for the United States Government in cutting, cleaning, and laying carpet. Mo-Ham maintains its principal office at Colorado Springs, Colorado.

(h) Baker, Mascon; Veteto, Whitney, and Mo-Ham are now, and have been at all times material herein, employers engaged in commerce within the meaning of Section 2(2) (6) and (7) of the Act, or in an industry affecting commerce.

(i) At all times material herein, Mo-Ham has been engaged, pursuant to the above-described contract, in the installation of carpet on the third, fourth, and sixth floors of the library at the United States Air Force Academy, Colorado Springs, Colorado.

(j) Since on or about July 9, 1969, and at all times material herein, Respondent has been engaged in a labor dispute with Mo-Ham.

(k) In furtherance of its dispute with Mo-Ham, Respondent has picketed Mo-Ham while engaged in the performance of the work described in paragraph (i) above.

(l) At no time material herein has the Respondent been engaged in a labor dispute with the United States Air Force Academy (herein called the Academy), Baker, Mascon, Veteto, or Whitney.

(m) On or about August 1, 1969, the Academy reserved the north gate entrance to the Academy for the exclusive use of Mo-Ham and its employees and suppliers, and reserved the south gate entrance to the Academy for the exclusive use of Baker, Mascon, Veteto, Whitney, and all other employers and their respective employees and sup-

pliers who are performing work and services on the premises of the Academy.

(n) Notwithstanding the above separate gate designation, Respondent at all times since August 1, 1969, has continued to picket the south gate entrance to the Academy.

(o) As a result of Respondent's acts and conduct referred to in paragraph (n) above, employees of Baker, Mascon, Veteto, Whitney, and other persons engaged in commerce or in an industry affecting commerce, ceased working for their employers.

(p) By the acts and conduct set forth in paragraph (n) above, Respondent has engaged in, and has induced and encouraged individuals employed by Baker, Mascon, Veteto, Whitney, and other persons engaged in commerce or in industries affecting commerce, to engage in strikes or refusals in the course of their employment to use, manufacture, process, transport or otherwise handle or work on goods, articles, materials or commodities, or to perform services, and threatened, restrained, and coerced the United States Government, the Academy, Baker, Mascon, Veteto, Whitney, and other persons engaged in commerce or in industries affecting commerce.

(q) An object of the acts and conduct engaged in by Respondent, set forth in paragraph (n) above, was, and is, to force or require the United States Government, the Academy, Baker, Mascon, Veteto, Whitney, and other persons engaged in commerce or in industries affecting commerce, to cease doing business with Mo Ham.

6. It may be fairly anticipated that, unless enjoined, Respondent will continue or repeat the acts and conduct set forth in paragraph 5, subparagraph (n) above, or similar or like acts and conduct in violation of Section 8(b) (4) (i) (ii), subparagraph (B) of the Act. It is therefore essential, appropriate, just and proper for the purposes of

effectuating the policies of the Act in accordance with the provisions of Section 10(l) therefore, that, pending final disposition of the matters involved herein pending before the Board, Respondent be enjoined and restrained from the commission of the acts and conduct above alleged, similar acts and conduct, or repetitions thereof.

Wherefore, Petitioner prays:

1. That the Court issue an order directing Respondent to appear before this Court, at a time and place fixed by the Court, and show cause, if any there be, why an injunction should not issue enjoining and restraining Respondent, its officers, representatives, agents, servants, employees, attorneys, and all members and persons acting in concert or participation with them, pending the final disposition of the matters involved herein pending before the Board from:

(a) Picketing at or in the vicinity of the south gate entrance to the Academy,

(b) In any manner or by any means, including picketing, orders, directions, instructions, requests, or appeals, however given or made, or by any like or related acts or conduct, or by permitting any such to remain in existence or effect, engaging in, or inducing or encouraging any individual employed by Baker, Mascon, Veteto, Whitney, or by any other person engaged in commerce or in an industry affecting commerce, to engage in a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities, or to perform any service, or in any manner or by any means, threatening, coercing, or restraining the United States Government, the Academy, Baker, Mascon, Veteto, Whitney, or any other person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is to force or require the United States Government, the Academy,

Baker, Mascon, Veleto, Whitney, or any other person to cease doing business with Mo Ham.

2. That upon return of said Order to Show Cause, the Court issue an Order enjoining and restraining Respondent in the manner set forth above.

3. That the court grant such further and other relief as may be just and proper.

Dated at Denver, Colorado, this 13th day of August, 1980.

/s/ Frances Speranzo
Frances Speranzo, Regional Director
National Labor Relations Board
Twenty Seventh Region
260 New Custom House
721 19th Street
Denver, Colorado 80202

Arnold Ordman,
General Counsel

Dominick L. Manoli,
Associate General Counsel

Julius G. Serot,
Assistant General Counsel

W. Bruce Gillis,
Regional Attorney, Region 27

/s/ Robert L. McCune
Board Attorney

/s/ Richard J. Wise
Board Attorney

National Labor Relations Board
Twenty Seventh Region
260 New Custom House
721 19th Street
Denver, Colorado 80202
297-3551

8-A21

Form Approved
Budget Bureau No. 44-R003.13

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

CHARGE AGAINST LABOR ORGANIZATION OR ITS AGENTS

INSTRUCTIONS: File an original and 3 copies of this charge and an additional copy for each organization, each local and each individual named in item 1 with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

DO NOT WRITE IN THIS SPACE

Case No. 27-CC-321

Date Filed July 24, 1969

1. LABOR ORGANIZATION OR ITS AGENTS AGAINST WHICH CHARGE IS BROUGHT

a. Name: CARPET, LINOLEUM, SOFT TILE AND RESILIENT FLOOR COVERING LAYERS, LOCAL 419, AFL-CIO

b. Union Representative to Contact: George Cooney, Financial Secretary & Bus. Agent

c. Phone No.: 244-4884

d. Address (Street, city, State and ZIP code): 1129 - 15th Street, Denver, Colorado

e. The above-named organization(s) or its agents has (have) engaged in and is (are) engaging in unfair labor practices within the meaning of section 8(b), subsection(s) (4)(D) (List Subsections) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

Since on or about July 21, 1969, the above-named labor organization, or its agents, engaged in, induced or encouraged the employees of B. H. Baker, Inc., Mascon, Inc., Consolidated Engineering, Inc., Nathkin & Company, Denver Acoustics, Inc., J. O. Vetter and Son, Inc., C. F. Long, Inc., Whitney Electric Company, and other persons engaged in commerce, or in an industry affecting commerce, to engage in a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform services, the object thereof being to force or require another employer, Moham Carpet Cleaners, to recognize or bargain with the above-named labor organization as the representative of Moham Carpet Cleaners' employees during a period of time when the above-named labor organization was not the certified bargaining agent as provided in Section 9 of the Act.

3. Name of Employer: B. H. BAKER, INC.

4. Location of Plant Involved (Street, city, State and ZIP code): P. O. Box 607, Colorado Springs, Colorado, 80901

5. Type of Establishment (Factory, mine, wholesaler, etc.): Construction Project

6. Identify Principal Product or Service: Building Construction

7. No. of Workers Employed: 20

8. Full Name of Party Filing Charge: B. H. BAKER, INC.

9. Address of Party Filing Charge (Street, city, State and ZIP code): P. O. Box 607, Colorado Springs, Colorado, 80901

10. Telephone No.: 473-3567

11. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By _____ Agent
(Signature of representative or person making charge) (Title or office, if any)

Address: P. O. Box 607, Colorado Springs, Colorado — 473-3567 (Telephone number) — July 24, 1969 (Date)

WILLFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

Exhibit A

APPENDIX G.

UNITED STATES DISTRICT COURT

For the District of Colorado.

FRANCIS SPERANDEO, Regional Director of the Twenty-Seventh Region of the National Labor Relations Board, for and on behalf of the NATIONAL LABOR RELATIONS BOARD, *Petitioner,* *vs.* CARPET, LINOLEUM, SOFT TILE AND RESILIENT FLOOR COVERING LAYERS, LOCAL UNION No. 419, AFL-CIO, *Respondent.*	Civil No. C-1674.

PETITION FOR INJUNCTION UNDER SECTION 10(l) OF THE NATIONAL LABOR RELATIONS ACT, AS AMENDED.

To the Honorable, the Judges of the United States District Court for the District of Colorado:

Comes Now Francis Sperandeo, Regional Director for the Twenty-Seventh Region of the National Labor Relations Board (herein called the Board), and petitions this Court for and on behalf of the Board, pursuant to Section 10(l) of the National Labor Relations Act, as amended, 61 Stat. 149; 73 Stat. 544; 29 U. S. C. Sec. 160(l) (herein called the Act), for appropriate injunctive relief pending the final disposition of the matters involved herein pending before the Board on charges alleging, *inter alia,* that Respondent has engaged in, and is engaging in, acts and

conduct in violation of Section 8(b)(4)(i)(ii), subparagraph (B) of the Act. In support thereof, Petitioner respectfully shows as follows:

1. Petitioner is Regional Director of the Twenty-Seventh Region of the Board, an agency of the United States, and files this petition for and on behalf of the Board.

2. Jurisdiction of the Court is invoked pursuant to Section 10(l) of the Act.

3. On or about July 29, 1969, Sanders Carpets & Draperies, Inc. (herein called Sanders), pursuant to the provisions of the Act, filed a charge with the Board alleging, *inter alia,* that Carpet, Linoleum, Soft Tile and Resilient Floor Covering Layers, Local Union No. 419, AFL-CIO (herein called Respondent), a labor organization, has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(b)(4)(i)(ii), subparagraph (B) of the Act. A copy of said charge is attached hereto as Exhibit A and made a part hereof.

4. The aforesaid charge was referred to Petitioner as Regional Director of the Twenty-Seventh Region of the Board.

5. Upon the basis of the following, the Petitioner has reasonable cause to believe that the said charge is true insofar as it alleges that Respondent has violated Section 8(b)(4)(i)(ii), subparagraph (B) of the Act, and that a complaint of the Board, based on said charge should issue against Respondent pursuant to Section 10(b) of the Act. More particularly, Petitioner has reasonable cause to believe, and believes, that Respondent, Carpet, Linoleum, Soft Tile and Resilient Floor Covering Layers, Local Union No. 419, AFL-CIO, is a labor organization within the meaning of Section 2(5), 8(b), 8(e), and 10(l) of the Act, and has engaged in, and is engaging in, acts and

conduct in violation of Section 8(b)(4)(i)(ii), subparagraph (B) of the Act, affecting commerce within the meaning of Section 2(6) and (7) of the Act, as follows:

(a) Respondent, an unincorporated association, is an organization in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers, concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(b) Respondent maintains its principal office at 1129-15th Street, Denver, Colorado, and at all times material herein, Respondent has been engaged within this judicial district in transacting business and in promoting and protecting the interests of the employee members of Respondent.

(c) At all times material herein George Cooney has been, financial secretary and business manager of the Respondent, and Paul G. Wishard and Richard Giesler have been, field representatives of Respondent.

(d) Sanders, a Colorado corporation, is engaged at 429 South Colorado Boulevard, Denver, Colorado, in the sale and distribution of carpets at retail. In the course and conduct of its business, Sanders annually distributes and sells annually within the State of Colorado, goods and materials and other merchandise having a gross value in excess of $500,000, of which goods and materials valued in excess of $50,000 are transported directly to the State of Colorado from points outside that State.

(e) At all times material herein, Sanders has not been engaged in business in the construction industry.

(f) At all times material herein, Sanders, in the course and conduct of its business, has subcontracted all of its carpet installation work and has employed no employees for the purposes of installing carpet.

(g) Sanders is now, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(2) (6) and (7) of the Act.

(h) James Leeman and Donald D. Goldtrap are engaged as a partnership in the business of carpet installing in Denver, Colorado. In the course and conduct of its business, Leeman and Goldtrap regularly provide services to Sanders, among others.

(i) On or about July 15, 1966, Respondent and Sanders executed a written agreement effective from July 1, 1966, until July 31, 1969, whereby Sanders agreed to give all of its floor covering work to a concern, or concerns, paying prevailing union wages and paying all fringe benefits as provided for in the Collective Bargaining Agreement entered into by Respondent and other floor covering employers. A copy of said Agreement is attached hereto and made a part hereof, as Exhibit B.

(j) At no time material herein has Respondent been the collective bargaining representative of any employees of Sanders.

(k) On or about July 28, 1969, Respondent demanded that Sanders enforce the above contract provisions that would require Sanders to give all of its floor covering work to a concern or concerns paying certain prevailing union wages and paying Union fringe benefits and to cease doing business with other persons who do not pay the specified rates and fringe benefits.

(l) Since on or about July 28, 1969, Respondent has attempted to force or require Sanders to cease using, selling, handling, transporting or otherwise dealing in the products of Goldtrap and Leeman, or to cease doing business with Goldtrap and Leeman.

(m) In furtherance of the aforesaid attempt to force or require Sanders to cease using, selling, handling, trans-

porting or otherwise dealing in the products of Goldtrap and Leeman, or to cease doing business with Goldtrap and Leeman, and in furtherance of the aforesaid attempt by Respondent to compel Sanders to enforce the aforementioned contract provisions, since on or about July 28, 1969, Respondent did authorize, establish, and maintain pickets at the premises of Sanders at its place of business at 429 South Colorado Boulevard, Denver, Colorado.

(n) By the acts and conduct set forth in subparagraphs (k), (l), and (m) above, Respondent has engaged in, and has induced and encouraged individuals employed by Sanders to engage in strikes or refusals in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on goods, articles, materials, or commodities, or to perform services, and has threatened, restrained and coerced Sanders.

(o) An object of the acts and conduct engaged in by Respondent, set forth in paragraphs (k), (l), (m) and (n) above, was, and is, to force or require Sanders to cease using, selling, handling, transporting, or otherwise dealing in the products of, and to cease doing business with the partnership of Goldtrap and Leeman.

6. It may be fairly anticipated that, unless enjoined, Respondent will continue or repeat the acts and conduct set forth in paragraph 5, subparagraphs (k), (l), (m), (n); and (o) above, or similar or like acts and conduct in violation of Section 8(b)(4)(i)(ii), subparagraph (B) of the Act. It is therefore essential, appropriate, just and proper for the purposes of effectuating the policies of the Act in accordance with the provisions of Section 10(l) thereof, that, pending final disposition of the matters involved herein pending before the Board, Respondent be enjoined and restrained from the commission of the acts and conduct above alleged, similar acts and conduct, or repetitions thereof.

WHEREFORE, Petitioner prays:

1. That the Court issue an Order directing Respondent to appear before this Court, at a time and place fixed by the Court, and show cause, if any there be, why an injunction should not issue enjoining and restraining Respondent, its officers, representatives, agents, servants, employees, attorneys, and all members and persons acting in concert or participating with them, pending the final disposition of the matters involved herein pending before the Board from:

(a) Picketing at or in the vicinity of the premises of Sanders or at locations where Sanders' products are being installed.

(b) In any manner or by any means, including picketing, orders, directions, instructions, requests, or appeals, however given, made or by any like or related acts or conduct, or by permitting any such to remain in existence or effect, engaging in, or inducing or encouraging any individual employed by Sanders, or by any other person engaged in commerce or in an industry affecting commerce, to engage in a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities, or to perform any service, or in any manner or by any means, threatening, coercing, or restraining Sanders, or any other person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is to force or require Sanders or any other person to cease using, selling, handling, transporting, or otherwise dealing in the products of or to cease doing business with the partnership of Goldtrap and Leeman.

2. That upon return of said Order to Show Cause, the Court issue an Order enjoining and restraining Respondent in the manner set forth above.

3. That the Court grant such further and other relief as may be just and proper.

Dated at Denver, Colorado, this 12th day of August, 1969.

/s/ FRANCIS SPERANDEO,
Francis Sperandeo,
Regional Director
Twenty-Seventh Region
National Labor Relations Board

ARNOLD ORDMAN,
General Counsel,

DOMINICK L. MANOLI,
Associate General Counsel,

JULIUS G. SEROT,
Assistant General Counsel,

W. BRUCE GILLIS, JR.,
Regional Attorney, Region 27.

/s/ RICHARD J. WISE
Richard J. Wise,
Board Attorney

National Labor Relations Board
Twenty-Seventh Region
260 New Custom House, 721 - 19th Street
Denver, Colorado Telephone 297-3551

I, the undersigned, Clerk of the United States District Court for the District of Colorado, do certify that the foregoing is a true copy of an original document remaining on file and record in my office.

Witness my hand and Seal of said Court this 16th day of September 1967.

G. WALTER BOWMAN,
Clerk

By /s/ R. J. HALL,
Deputy

Form Approved
Budget Bureau No. 64-R303.17

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

CHARGE AGAINST LABOR ORGANIZATION OR ITS AGENTS

INSTRUCTIONS: File an original and 3 copies of this charge and an additional copy for each organization, each local and each individual named in item 1 with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

DO NOT WRITE IN THIS SPACE

Case No. 27-CC-323

Date Filed July 29, 1969

1. LABOR ORGANIZATION OR ITS AGENTS AGAINST WHICH CHARGE IS BROUGHT

a. Name: CARPET, LINOLEUM, SOFT TILE AND RESILIENT FLOOR COVERING LAYERS, LOCAL UNION NO. 419, AFL-CIO

b. Union Representative to Contact:

c. Phone No.: 244-4884

d. Address (Street, city, State and ZIP code): 1129 Fifteenth Street, Denver, Colorado

e. The above-named organization(s) or its agents has (have) engaged in and is (are) engaging in unfair labor practices within the meaning of section 8(b), subsection(s) (4) (B) (List Subsections) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

Since on or about July 28, 1969, the above-named labor organization, by and through its officers, agents, and representatives, has induced and encouraged individuals employed by Sanders Carpet and Draperies, Inc. (hereinafter Sanders) to engage in a refusal in the course of their employment to perform services for said Sanders, and has threatened, restrained and coerced said Sanders, where in each case an object thereof was and is to force or require Sanders to cease doing business with Don Goldtrap.

3. Name of Employer: DON GOLDTRAP

4. Location of Plant Involved (Street, city, State and ZIP code): 1280 S. Zenobia Street, Denver, Colorado

5. Type of Establishment (Factory, mine, wholesaler, etc.): Retail Store

6. Identify Principal Product or Service: Carpets & Draperies

7. No. of Workers Employed: 9

8. Full Name of Party Filing Charge: SANDERS CARPETS AND DRAPERIES, INC.

9. Address of Party Filing Charge (Street, city, State and ZIP code): 470 South Colorado Blvd., Denver, Colorado

10. Telephone No.:

11. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By _____ Secretary-Treasurer
(Signature of representative or person making charge) (Title or office, if any)

Address 470 South Colorado Blvd. Denver, Colorado (Telephone number) July 29, 1969 (Date)

WILLFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

Exhibit A

GPO 861-957

SA82

LOCAL No. 419

Affiliated with
Brotherhood of Painters, Decorators and Paperhangers of America

Denver, Colorado

We, SANDERS & SONS, INC. do hereby agree to give all of our floor covering work to a concern, or concerns, paying the prevailing wages as outlined below.

From July 1, 1966, to June 30, 1967, inclusive:
JOURNEYMAN $4.10 per hour
CARPET SEWER 2.82 per hour
APPRENTICES; first 6 months of apprenticeship 45% of journeyman wage rate.
second 6 months of apprenticeship 50% of journeyman wage rate.
third 6 months of apprenticeship 55% of journeyman wage rate.
fourth 6 months of apprenticeship 60% of journeyman wage rate.
fifth 6 months of apprenticeship 65% of journeyman wage rate.
sixth 6 months of apprenticeship 70% of journeyman wage rate.
seventh 6 months of apprenticeship 80% of journeyman wage rate.
eighth 6 months of apprenticeship 90% of journeyman wage rate.

From July 1, 1967, to December 31, 1967, inclusive:
JOURNEYMAN $4.20 per hour
CARPET SEWER 2.90 per hour
APPRENTICES; above percentages based on current journeyman wage rate.

From January 1, 1968, to June 30, 1968, inclusive:
JOURNEYMAN $4.30 per hour
CARPET SEWER 2.98 per hour
APPRENTICES; above percentages based on current journeyman wage rate.

From July 1, 1968, to December 31, 1968, inclusive:
JOURNEYMAN $4.45 per hour
CARPET SEWER 3.06 per hour
APPRENTICES; above percentages based on current journeyman wage rate.

From January 1, 1969 to July 31, 1969, inclusive:
JOURNEYMAN $4.60 per hour
CARPET SEWER 3.15 per hour
APPRENTICES; above percentages based on current journeyman wage rate.

All classifications shall receive 2% or more vacation pay in accordance with the Collective Bargaining Agreement entered into by CARPET, LINOLEUM AND RESILIENT TILE LAYERS, LOCAL UNION NO. 419, and the Employers in the floor covering industry doing business within the geographical area within the jurisdiction of said Union, as of July 1, 1966, and all classifications shall receive all other fringe benefits covered by said Collective Bargaining Agreement.

Full time _____ day of _____, 1966.

CARPET, LINOLEUM AND RESILIENT TILE LAYERS
LOCAL UNION NO. 419

By _____

Employer

By _____

Exhibit B

STATE OF COLORADO
CITY AND
COUNTY OF DENVER } ss.

I, Francis Sperandeo, being first duly sworn depose and say that I am Regional Director of the Twenty-Seventh Region of the National Labor Relations Board; that I have read the foregoing petition and exhibit and know the contents thereof; that the statements therein made as upon personal knowledge are true and those made as upon information and belief, I believe to be true.

/s/ FRANCIS SPERANDEO
Francis Sperandeo

Subscribed and sworn to before me this 12th day of August, 1969.

/s/ EDITH M. STEPHENS
Edith M. Stephens
Notary Public.

(SEAL)

My commission expires September 14, 1969.

conduct in violation of Section 8(b)(7), subparagraph (C) of the Act, affecting commerce within the meaning of Sections 2(6) and (7) of the Act, as follows:

(a) Respondent, an unincorporated association, is an organization in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(b) At all times material herein, George Cooney has been financial secretary of Respondent, Paul Wishard has been Business Representative of Respondent, and Billy Vice has been an employee and agent of Respondent.

(c) Respondent maintains its principal office at Denver, Colorado, and at all times material herein, Respondent has been engaged within this judicial district in transacting business and in promoting and protecting the interests of the employee members of Respondent.

(d) Aristocraft is engaged at Denver, Colorado, in the sale and installation of floor covering and tile. During the last twelve months, which period is representative of all times material herein, Aristocraft, in the course and conduct of its business operations, received goods and materials valued in excess of $7,000 at its Denver, Colorado, operation, directly from points outside the State of Colorado; and received goods and materials valued in excess of $50,000 at its Denver, Colorado, operation from other enterprises, including *inter alia,* William Volker & Company, Larson Distributing Company, Western Applicance Corp., Wholesale Flooring, Inc., Wholesale Ceramic Tile, Inc., and Downs Supply Co., all of Denver, Colorado, which other enterprises had received the said goods and materials directly from points outside the State of Colorado.

(e) Respondent is not currently certified as the representative of any of Aristocraft's employees.

(f) No charge has been filed with the Board under Section 8(a)(2) of the Act alleging that Aristocraft has unlawfully recognized, or assisted any labor organization.

(g) Notwithstanding the aforesaid, Respondent, since on or about August 8, 1967, has demanded that Aristocraft recognize and bargain with Respondent as the representative of Aristocraft's floor covering and tile installation employees, and Respondent has been attempting to compel Aristocraft's floor covering and tile installation employees to accept or select Respondent as their collective bargaining representative.

(h) In furtherance of the aforesaid demand for recognition and bargaining and attempt to compel Aristocraft's floor covering and tile installation employees to accept or select Respondent as their collective bargaining representative, Respondent, at all times material since on or about December 7, 1967 (excluding the period from January 3 to January 8, 1968), has picketed Aristocraft at various of Aristocraft's job installation sites in Denver, Colorado.

(i) An object of Respondent's picketing set forth in subparagraph (h) above, is to force or require Aristocraft to recognize or bargain with Respondent as the representative of Aristocraft's floor covering and tile installation employees, and to force or require Aristocraft's floor covering and tile installation employees to accept or select Respondent as their collective bargaining representative notwithstanding that Respondent is not currently certified as a representative of such employees.

(j) Respondent engaged in the activity set forth in paragraph 5, subparagraphs (h) and (i) above notwithstanding that no valid petition under Section 9(c) of the Act involving employees of the Employer has been filed within a reasonable period of time from the commencement of such picketing.

(k) It may fairly be anticipated that, unless enjoined, Respondent will continue or repeat the acts set forth in paragraph 5, subparagraphs (h) and (i) above or similar or like acts and conduct in violation of Section 8(b)(7), subparagraph (C), of the Act. It is therefore essential, appropriate, just and proper, for the purpose of effectuating the policies of the Act, and in accordance with the provisions of Section 10(l) thereof, that, pending final disposition of the matters involved herein pending before the Board, Respondent be enjoined and restrained from the commission of the acts and conduct above alleged, similar acts and conduct, or repetitions thereof.

Wherefore, Petitioner prays:

1. That the Court issue an order directing Respondent to appear before this Court, at a time and place fixed by the Court, and show cause, if any there be, why an injunction should not issue, enjoining and restraining Respondent, its officers, agents, servants, employees, and all members and persons acting in concert or participation with them, pending the final disposition of the matters involved herein pending before the Board, from:

(a) Continuing their current picketing of Aristocraft, where an object thereof is to force or require Aristocraft to recognize or bargain with Respondent, or any other labor organization, as the representative of Aristocraft's floor covering and tile installation employees, or to force or require Aristocraft's employees to accept or select Respondent, or any other labor organization, as their collective bargaining representative until the Board determines that a question concerning representation of Aristocraft's employees may appropriately be raised under Section 9 of the Act.

2. That upon return of said order to show cause, the Court issue an order enjoining and restraining Respondent in the manner set forth above.

3. That the Court grant such further and other relief as may be just and proper.

Dated at Denver, Colorado, this 23rd day of January, 1968.

/s/ CLYDE F. WAERS
Clyde F. Waers,
Regional Director
National Labor Relations Board
Twenty-Seventh Region
260 New Custom House
721—19th Street
Denver, Colorado 80202

ARNOLD ORDMAN,
General Counsel

DOMINICK L. MANOLI,
Associate General Counsel

JULIUS G. SEROT,
Assistant General Counsel

FRANCIS SPERANDEO,
Regional Attorney, Region 27

W. BRUCE GILLIS, JR.,
Attorney

RICHARD J. WISE,
Attorney

National Labor Relations Board
Twenty-Seventh Region
260 New Custom House
721—19th Street
Denver, Colorado 80202
Telephone No. 297-3551

I, the undersigned, Clerk of the United States District Court for the District of Colorado, do certify that the foregoing is a true copy of an original document remaining on file and record in my office.

Witness my hand and Seal of said Court this 16th day of Sept. 1969.

G. WALTER BOWMAN,

Clerk

By /s/ R. J. HALL,

Deputy.

Exhibit 1

Form Approved
Budget Bureau No. 64-R003.12

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

CHARGE AGAINST LABOR ORGANIZATION OR ITS AGENTS

INSTRUCTIONS: File an original and 3 copies of this charge and an additional copy for each organization, each local and each individual named in item 1 with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

DO NOT WRITE IN THIS SPACE

Case No. 27-CP-39

Date Filed January 2, 1968

1. LABOR ORGANIZATION OR ITS AGENTS AGAINST WHICH CHARGE IS BROUGHT

a. Name: CARPET, LINOLEUM AND RESILIENT TILE LAYERS LOCAL UNION NO. 419

b. Union Representative to Contact: George A. Cooney

c. Phone No.: 244-4884

d. Address (Street, city, State and ZIP code): 1129 - 15th Street, Denver, Colorado 80202

e. The above-named organization(s) or its agents has (have) engaged in and is (are) engaging in unfair labor practices within the meaning of section 8(b), subsection(s) (7) (c) (List Subsections) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

Since on or about August 5, 1967, and intermittently thereafter, particularly since December 8, 1967, and continuing to date, the above-named labor organization, by and through its officers, agents, and representatives, has picketed, and caused to be picketed, Aristocraft Counter and Floor Covering, Inc. (hereinafter Aristocraft), where an object thereof is to force or require said Aristocraft to recognize or bargain with the above-named labor organization as the representative of its employees, or to force or require the employees of said Aristocraft to accept or select said labor organization as their collective bargaining representative, where said collective bargaining representative is not currently certified as representative of said employees.

By the above and by other acts and conduct, the above-named labor organization has restrained and coerced employees in the exercise of rights guaranteed under Section 7 of the Act.

3. Name of Employer: ARISTOCRAFT COUNTER AND FLOOR COVERING, INC.

4. Location of Plant Involved (Street, city, State and ZIP code): 6805 Leetsdale Drive Denver, Colorado

5. Type of Establishment (Factory, mine, wholesaler, etc.): Floor shop

6. Identify Principal Product or Service: Floor covering and tile laying

7. No. of Workers Employed: 8

8. Full Name of Party Filing Charge: ARISTOCRAFT COUNTER AND FLOOR COVERING, INC.

9. Address of Party Filing Charge (Street, city, State and ZIP code): 6805 Leetsdale Drive Denver, Colorado

10. Telephone No.: 388-6485

11. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By /s/ Robert R. Rice (Signature of representative or person making charge) — President (Title or office, if any)

Address 6805 Leetsdale Drive, Denver, Colo. — 388-6485 (Telephone number) — January 2, 1968 (Date)

WILLFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

COPY

GPO 911-397

APPENDIX I.

September 13, 1963.

Before Judges Barnes & Jertberg, *CCJ.* & Stephens, *DJ.*

18350 *The Frito Company, Western Division* v. *N. L. R. B.*

Petition to review & petition to enforce argued by Mr. Harvey Letter, Atty. for the NLRB, for the board; by Mr. Carl M. Gould for amicus curiae Reach Merchandising & for the Frito Co.; by Mr. Kenneth M. Schwartz for Retail Clerk's 770 and by Mr. William B. Irvin for Retail Clerk's Nos. 899, et al.; and by Mr. Joseph M. McLaughlin for intervenors Alpha Beta Foods et al.

September 8, 1965.

Before Judges Barnes, Hamlin & Merrill, *CJJ.*

20201 Retail Clerks Union Local No. 173, et al. and Ralph E. Kennedy, Regional Director, *NLRB* v. *Food Employers Council, Inc., et al.*

Mr. Kenneth Schwartz argued for the appellants; Mr. Frank H. Itkin, Atty. for the NLRB, argued for the board; Mr. Charles Hackler argued for the *amicus curiae* Joint Council & American Research; Mr. Joseph M. McLaughlin present for the appellees but did not argue.

I certify that the above is a listing of counsel who argued in the two above matters.

Attest my hand and the seal of the said the United State Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 6th day of October, 1969.

WILLIAM B. LUCK, *Clerk,*
by RAYMOND D. HEWITT, *Deputy.*